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No. 432

In the Supreme Court of the United States

OCTOBER TERM, 1958

BASILIO FUGIANI, PETITIONER

v.

BRUCE G. BARBER, DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE, SAN FRANCISCO, CALIFORNIA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM SUGGESTING THAT THE CAUSE IS MOOT

J. LEE RANKIN,
Solicitor General,
Department of Justice, Washington 25, D. C.

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Petitioner, who is admittedly deportable, sought judicial review of the action of the administrative authorities in denying him the discretionary relief of suspension of deportation or voluntary departure. The district court dismissed the complaint and the court of appeals affirmed on July 11, 1958. Petitioner then sought review by this Court.

Consideration of the petition raised some doubts as to whether the denial of relief to petitioner had been in the exercise of discretion or on the ground that he had not met the statutory requirements for discretionary relief. In view of that fact, the Immigration Service made a motion before the Board of Immigra-

tion Appeals to reopen the case and remand it for clarification of the record and for consideration of the respondent's eligibility under Section 7 of the Act of September 11, 1957. On November 28, 1958, the Board of Immigration Appeals granted the motion, writing an opinion, a copy of which is annexed hereto.

In view of the reopening of the proceedings, there is no longer an outstanding order of deportation which is subject to review. The cause has, accordingly, become moot. It is therefore respectfully suggested that the judgment below should be vacated and the case remanded to the district court with directions to dismiss the complaint as moot. See *Jew Sing* v. *Barber*, 350 U. S. 898; *Garcia* v. *Landon*, 348 U. S. 866; *Sawyer* v. *Dollar*, 344 U. S. 806; *United States* v. *Munsingwear, Inc.*, 340 U. S. 36.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

DECEMBER 1958.

U. S. DEPARTMENT OF JUSTICE, BOARD OF IMMIGRATION APPEALS

Nov. 28, 1958

File: A-10490458—San Francisco

IN RE: BASILIO FUGIANI, IN DEPORTATION PROCEEDINGS

MOTION ON BEHALF OF RESPONDENT: Z. B. JACKSON, ESQUIRE, 580 WASHINGTON STREET, SAN FRANCISCO, CALIFORNIA

Charges: Warrant: Act of 1924 (8 U S C 214, 1946 Ed.)—Remained longer—visitor

Lodged: None

Application: Reopening of proceedings

This case is before us on motion of the Service dated November 4, 1958.

The respondent is a 43-year-old married male, native and citizen of Italy, who last entered the United States on February 22, 1950 and was admitted temporarily as a visitor until June 1, 1950. Since the latter date he has remained in the United States without authority, and he is deportable on the charge stated above.

When this case was before us on October 5, 1954, we dismissed the respondent's appeal from a decision of a special inquiry officer directing deportation. The respondent has filed a petition for certiorari in the

Supreme Court from an adverse decision of the United States Court of Appeals for the Ninth Circuit on July 11, 1958 in *Fugiani* v. *Barber,* No. 15,162. In its motion, the Service stated that it was not clear from the record whether relief from deportation had been denied to the respondent in the exercise of discretion or on the ground that he had not met the statutory requirements for discretionary relief. This is one of the points involved in the pending litigation. The Service is of the opinion that the case should be remanded to it for clarification of the record and for consideration of the respondent's eligibility under Section 7 of the Act of September 11, 1957. After careful consideration of the record, we will grant the motion of the Service.

Order: It is ordered that the motion of the Service be granted.

It is further ordered that the order of this Board dated October 5, 1954 and the outstanding order and warrant of deportation be withdrawn.

It is further ordered that the hearing be reopened and that the case be remanded to the special inquiry officer for further proceedings in accordance with the foregoing.

[Signed] THOS. G. FINUCANE,
Chairman.

U. S. GOVERNMENT PRINTING OFFICE: 1959